

APPENDIX TO CHAPTER I – Ethics Code

For local public officials

Mitigating Conflicting Interests: Private Interest vs. Public Responsibility

In a representative democracy, the representatives are drawn from society and, therefore, cannot and should not be without all personal and economic interest in the decisions and policies of government. Standards of conduct for public officials need to distinguish between those minor and inconsequential conflicts that are unavoidable in a free society and those conflicts which are substantial and material.* §19.59, *Wisconsin Statutes*, creates a code of ethics for local elected and appointed officials. Other laws, notably §946.13, *Wisconsin Statutes*, may also apply.

ACTING IN AN OFFICIAL CAPACITY

MAKING POLICY. When a local public official or a board, commission, or other body of which an official is a member is called upon to propose or to act on an ordinance or to promulgate or issue a general policy, the official may participate in that action, even though the action will affect the official, a member of the official's immediate family, or an organization with which the official is associated, as long as:

- The official's action affects a whole class of similarly-situated interests;
- Neither the official's interest, the interest of a member of the official's immediate family, nor the interest of a business or organization with which the official is associated is significant when compared to all affected interests in the class; AND
- The action's effect on the interests of the official, of a member of the official's immediate family, or of the related business or organization is neither significantly greater nor less than upon other members of the class.

APPLYING POLICY. A local public official should not, in an official capacity, participate in or perform any discretionary action with respect to the making, grant, or imposition of an award, sanction, permit, license, zoning change, contract, offer of employment, or agreement in which the official or a member of the official's immediate family or a business or organization with which the official is associated † has a substantial financial interest, direct or indirect.‡ In addition, a local public official should not, in an official capacity, participate in a matter affecting a business or organization from which the official or a member of the official's immediate family receives substantial compensation or income.§

* See comparable statement concerning state government officials at §19.45(1), *Wisconsin Statutes*.

† "**Associated**", when used in connection with "business" or "organization" refers to a business or organization of which an individual or a member of the individual's household or immediate family is an officer, director, trustee, owner of a 10% or greater interest, or authorized representative. An individual is not associated with a business or organization merely because the individual is a member or employee.

‡ §19.59(1)(a) and (c), *Wisconsin Statutes*.

§ 1994 Wis Eth Bd 5.

This is a guide. For authoritative information consult *Wisconsin Statutes*.

Prepared by the Wisconsin Ethics Board. 44 E. Mifflin Street, Suite 601, Madison, WI 53703-2800. (608) 266-8123
December 2001. Obtain revised edition after February 2003.

<http://ethics.state.wi.us>

HOW TO WITHDRAW FROM OFFICIAL ACTION

When a matter in which a public official should not participate comes before a board, commission, or other body of which the official is a member, the official should leave that portion of the body's meeting involving discussion, deliberations, or votes related to that matter and ask that the body's minutes reflect the absence. The body's remaining members may review the matter and take whatever action they find appropriate.

ACTING IN A PRIVATE CAPACITY

APPLICATIONS, BIDS, AND CONTRACTS. Usually, a local public official should not, in a private capacity, apply, negotiate, bid for, or receive any award, sanction, permit, license, zoning change, contract, offer of employment, or agreement in which the official has a private financial interest, direct or indirect, if the official is *authorized* to perform in regard to it any governmental function requiring the exercise of discretion, even if the official does not participate in the governmental action or exert any influence on his or her own behalf. **

REPRESENTING CLIENTS. A local public official should not, for compensation or on behalf of an employer, represent an individual, business, or organization before a board, commission, or other body of which an official is a member. The statutory code of ethics is not an obstacle to a local official's partner or business associate representing a client before such board, commission, or other body as long as the official is not financially interested in, and does not exercise control over, the representation. ††

** With limited exceptions, §946.13, *Wisconsin Statutes*, makes it a felony for a governmental official to negotiate or bid for or enter into a contract in which the official has a private pecuniary interest if at the same time the official is *authorized* to perform in regard to that contract some official function requiring the exercise of discretion. As long as private activity is not otherwise prohibited, departure from the usual rule may be justified in an occasional, sporadic, or infrequent case such as an official's action in a private capacity to protect or preserve a private interest of the official or the official's family.

†† §19.59(1)(b), *Wisconsin Statutes*, prohibits an official to accept anything of value that could reasonably be expected to influence official action or judgment. The disqualification from official action that would be required of a local government official who accepted pay for being an advocate before the very government body to which his or her office pertains is a clear, direct, and reasonably foreseen effect upon official action.

Attending Conferences, Seminars, and Receptions when not a speaker or participant A Guide to Wisconsin Law

This guideline provides general advice about a state government official's * attending a conference, seminar, or reception at which the official is not a featured speaker or participant in a formal program. The advice is applicable to events in the capital, elsewhere in Wisconsin, and beyond Wisconsin's borders. For situations in which the official is a featured speaker or program participant, see Ethics Board Guidelines 211 and 212.

General rule. Except in accordance with this guideline, a state public official should not accept admission to an event or transportation, lodging, food, meals, or beverage, offered in connection with an event that is furnished by a lobbyist or by an organization that employs a lobbyist or that is offered because the official holds a state public office.

Attendance specifically authorized as on behalf and for the benefit of the state. A state official attending a conference, seminar, or reception on behalf of the State of Wisconsin and primarily for the state's benefit may accept transportation, lodging, food, meals, beverages, and the like that are provided, arranged, or sanctioned by the event's organizer and authorized by the chief executive or governing body of the agency of which the official is a part as costs which would appropriately be paid by the state in furtherance of state business.† Unless attendance is authorized by the chief executive or governing body of the agency of which the official is a part, a state official attending a conference on state business should not accept food, drink, or entertainment offered at a privately hosted reception, hospitality suite, or the like that may be held in connection with or coincident with the conference but is not sanctioned by the event's organizer.

Attendance not specifically authorized by the state.

Event sponsored by an organization that employs a lobbyist. A state official may attend a conference or seminar sponsored by an organization that employs a lobbyist only if it is primarily an educational or informational presentation related to the official's duties (and may do so even at a reduced cost or at no cost) and may attend a banquet, reception, or the like only if it is intended for and conducive to the discussion of state governmental processes, proposals, or issues (but must pay for food, drink, and entertainment offered). [§13.625(6t)]

Food and drink at events. Regardless of an event's sponsor, the official should pay the greatest of:

- the price of admission, § food, and drink charged others;
- the sponsor's true per-person cost of admission § and entertainment plus food and drink provided the official; or
- the true value of admission § and entertainment, plus food and drink provided the official.

* This guide applies to elected state officials and to others holding a state public office identified under §20.923, *Wisconsin Statutes*, who have rule-making responsibilities. See §§13.62(3) and 19.42(13), *Wisconsin Statutes*. Other state officials and employees may also be subject to some of the restrictions.

† Ordinarily, an official may establish that the costs of attending a conference, seminar, or reception are appropriately paid by the state and the official's attendance is primarily for the state's benefit by obtaining the written authorization of:

- in the case of a representative, the Speaker of the Assembly;
- in the case of a senator, the Senate Committee on Organization; and
- in other cases, the head of the state agency, department, or governing body to which the official's office pertains. [§19.56(3)(c)].

OTHER CIRCUMSTANCES: An official may receive and retain:

- a. **Items and services offered for a reason unrelated to the official's holding a government office and not offered by a lobbyist or by an organization that employs a lobbyist.** Transportation, lodging, food, meals, or beverages, or reimbursement therefore; payment or reimbursement of costs; or free admission or discount that the official can show by clear and convincing evidence were offered for a reason unrelated to the official's holding a government office and were not furnished by a lobbyist or an organization that employs a lobbyist. [§19.56(3)(b)]
- b. **Items and services made available to the general public.** Admission, transportation, lodging, food, meals, or beverages when each of the following applies:
 1. The admission, items, or services are available to anyone who wants them;
 2. The official is not given a preference or advantage in obtaining admission, items, or service; and
 3. There is no offer or notice of the event, item, or service directed to an official that would confer an advantage to the official. [§13.625(2)]
- c. **Items and services from the State of Wisconsin.** Transportation, lodging, food, meals, or beverages, or reimbursement therefore, or payment or reimbursement of costs received from the State of Wisconsin and primarily for the benefit of the state and not primarily for the private benefit of the official or any other person. [§19.56(3)(c)]
- d. **Items and services provided by a campaign committee.** Transportation, lodging, food, meals, or beverages, or reimbursement therefore, or payment or reimbursement of costs permitted and reported in accordance with Wisconsin's campaign finance laws (Chapter 11, *Wisconsin Statutes*). [§19.56(3)(d)]
- e. **Items and services received from the Department of Tourism.** Anything of value that the Department of Tourism provides for the purpose of hosting individuals to promote tourism. [§19.56(3)(em) and (f)]
- f. **Items and services received from the Department of Commerce.** Anything of value that the Department of Commerce provides for the purpose of:
 1. The Department's sponsorship of a trip to a foreign country primarily to promote trade between that country and this state that the Department can demonstrate by clear and convincing evidence is primarily for the benefit of the state, or
 2. Hosting of individuals in order to promote business, economic development, tourism, or conferences sponsored by multistate, national, or international associations of governments or governmental officials. [§19.56(3)(e) and (f)]

§ If offered, an official may accept reduced-cost or free admission to that portion of an event that is an educational or informational seminar or talk.

Officials' receipt of food, drink, favors, services, etc.

ITEMS SPECIFICALLY AUTHORIZED

Wisconsin law forbids a public official to use free or discounted transportation, traveling accommodation, or communication services for which the supplier would usually charge [§946.11, Wisconsin Statutes; Art. 13, §11, Wisconsin Constitution], otherwise—

Consistent with the statutes administered by the Ethics Board, *an elected state official or legislative employee may accept and retain:*

- a. **ITEMS AND SERVICES UNRELATED TO PUBLIC POSITION AND NOT PROVIDED BY A LOBBYIST OR LOBBYING ORGANIZATION.** Food, drink, transportation, lodging, items, and services furnished by neither a lobbyist nor an organization that employs a lobbyist and which the recipient can clearly demonstrate are received for a reason unrelated to the recipient's holding or having held *any* public position [§§19.45(3m) and 19.56(3)(b), *Wisconsin Statutes*] and which could not reasonably be expected to influence an official's vote, official actions or judgment, nor reasonably be considered a reward for any official action or inaction;
- b. **EXPENSES FOR TALKS AND PROGRAMS.** Payment or reimbursement by a meeting's sponsor of expenses an official or employee incurs for presenting a talk or program about state issues (including meal and travel costs) [§19.56(3)(a)];
- c. **EXPENSES PROVIDED BY OR TO THE STATE.** Food, drink, transportation, lodging, or payment or reimbursement of costs that the official can clearly and convincingly demonstrate are provided by or for the state and for the state's benefit, not for a private benefit * [§19.56(3)(c)];
- d. **INFORMATION.** Informational materials of unexceptional value [§§13.625(6t) and 19.45(2)]; and
- e. **SERVICES, ITEMS, AND REIMBURSEMENTS FROM CAMPAIGN COMMITTEES.** Services, items, and reimbursements from campaign committees ** as permitted and reported under campaign finance laws [§19.56(3)(d)].

* Normally, in the case of a legislator, the certification of the committee on organization or the presiding officer of the appropriate house of the legislature that the cost or item or service would otherwise be paid by the state of Wisconsin is all that is needed to meet the statute's requirement that a reimbursement or item or service be provided for the benefit of the state, not for a private benefit.

** Except a lobbyist's personal campaign committee.

Restraints on officials' receipt of food, drink, favors, services, etc. STATUTORY RESTRAINTS

Except as noted on the other side of the page, *an elected state official or legislative employee should not accept:*

1. **ITEMS OR SERVICES OFFERED BECAUSE OF STATE POSITION.** Any item or service of more than nominal value offered because of the person's holding a state public office [§19.45(2), *Wisconsin Statutes*];
2. **FOOD, DRINK, OR TRAVEL OFFERED FOR A REASON RELATED TO HOLDING ANY PUBLIC POSITION.** Food, drink, transportation, or lodging except when offered for a reason unrelated to the recipient's holding or having held *any* public position and the recipient can demonstrate that clearly and convincingly [§§19.45(3m) and 19.56(3)(b)];
3. **ITEMS OR SERVICES FROM LOBBYISTS.** Food, drink, transportation, lodging, employment, or any other thing of pecuniary value from a lobbyist †, either directly or through an agent [§13.625(1)-(3)];
4. **ITEMS OR SERVICES FROM ORGANIZATIONS THAT EMPLOY LOBBYISTS.** Food, drink, transportation, lodging, employment, or any other thing of pecuniary value from an organization that employs a lobbyist unless also made available to the general public on like terms and conditions ‡ [§13.625(2)]; and
5. **TRANSPORTATION, TRAVELING ACCOMMODATIONS, OR COMMUNICATION SERVICES.** Transportation or traveling accommodation for which the supplier would usually charge [§946.11; Art. 13, §11, Const.].

† Unless the lobbyist and recipient are married to each other, are engaged to be married, reside in the same household, or are close relatives. [§13.625(6)]

‡ In the case of an individual subject to the lobbying law, who also serves in an *elected* position in a local government that employs a lobbyist, the local government may furnish the individual anything it normally furnishes to other similarly situated elected officials. [§13.625(6g)(a)] If an individual is *appointed* to a local government position compatible with the state position, the local government may furnish the individual a per diem or reimbursement of expenses up to the amount furnished to other similarly situated elected officials. [§13.625(6g)(b)]

Clerical employees are unaffected by the restraints of paragraphs 1 and 2.